

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL FROM THE EXAMINER TO THE BOARD
OF PATENT APPEALS AND INTERFERENCES**

In re Application of: Steinhorst et al.
Serial Number: 10/609,332
Confirmation No.: 7931
Art Unit: 2613
Examiner: Christina Y. Leung
Title: METHOD AND SYSTEM FOR UPGRADING A FIBER
OPTICS NETWORK

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Reply Brief

Appellants respectfully submit this Reply Brief under 37 C.F.R. § 41.41(a)(1) in response to the Examiner's Answer transmitted April 28, 2009.

On June 24, 2008, Appellants filed an Appeal Brief explaining clearly and in detail why the final rejection of Claims 1-33 is improper. On April 28, 2009, the Examiner mailed an Examiner's Answer to Appellants Appeal Brief. Appellants maintain that the final rejection of Claims 1-33 is improper and respond to the Examiner's Answer below.

Argument

In response to the Examiner's arguments in the Examiner's Answer, Appellants respond as follows. Appellants will address the Examiner's arguments presented in the "Response to Argument" section of the Answer (pp. 20-22). Appellants rely on the arguments presented in the Appeal Brief, but will also briefly address some of the new assertions made in the Examiner's Answer.

I. Bruckman does not disclose a node that transmits data at a data transmission rate coupled to a node that transmits data at an increased rate

As discussed in Appellants' Appeal Brief, Claim 1 is allowable at least because *Bruckman* does not teach or suggest "increasing a data transmission rate of the first node to an increased rate, the first node coupled to a second node" and "the second node operable to transmit data at the data transmission rate." As explained in Appellants' Appeal Brief, Appellants maintain that *Bruckman* fails to teach or suggest nodes transmitting at different rates. The Examiner has failed to address Appellants' argument that *Bruckman* fails to disclose a node coupled to another node with one node transmitting at (1) *a data transmission rate*, and the other node transmitting at (2) *an increased rate*, as required by Claim 1. Whether or not *Bruckman* discloses a **simultaneous node upgrade** does not change the fact that *Bruckman* fails to teach or suggest nodes transmitting at different rates. As pointed out in Appellants' Appeal Brief, *Bruckman* teaches a **simultaneous rate increase** of all nodes such that all nodes transmit at a **single increased rate**. In other words, *Bruckman* teaches that all nodes transmit at the **same rate**, regardless of their upgrade status, but does not teach or suggest one node transmitting at **an increased rate** while another coupled node transmits at **an original rate**. Therefore, *Bruckman* fails to disclose a node coupled to another node with one node transmitting at (1) *a data transmission rate*, and the other node transmitting at (2) *an increased rate* because, as noted at Page 20 Examiner's Answer, *Bruckman* teaches that all nodes "operate together at the new increased rate."

For at least these additional reasons, as well as the reasons provided in the Appeal Brief, Appellants respectfully submit that *Bruckman* does not teach or suggest "upgrading a first node in the optical communications ring by increasing a data transmission rate of the first node to an increased rate, the first node coupled to a second node" and "the second node operable to transmit data at the data transmission rate," as recited in Claim 1. For at least

these reasons, Appellants respectfully submit that Claim 1 as well as the claims that depend from this independent claim are in condition for allowance. Therefore, Appellants respectfully request allowance of these claims.

II. *Bruckman* does not disclose transmitting data in a frame having a number of time slots equal to M, wherein M is an integer greater than N and the data occupies a number of the second time slots of the second frame equal to N

As discussed in Appellants' Appeal Brief, Claim 1 is allowable also at least because *Bruckman* does not teach or suggest "transmitting data in a second frame . . . the second frame having a number of second time slots equal to M, wherein M is an integer greater than N and the data occupies a number of the second time slots of the second frame equal to N." The Examiner's Answer contends that Paragraph 75 of *Bruckman* discloses "occupying N time slots of M time slots available," but this is incorrect. Paragraph 75 of *Bruckman* discloses provisioning certain channels of a card. Appellants respectfully submit that provisioning certain channels of a card does not teach or suggest occupying **certain time slots of frames** with data because provisioning channels of a card has no impact on the data within frames, much less time slots of frames. Instead, provisioning certain channels of a card merely impacts bandwidth. As explained in Appellants' Appeal Brief, Appellants maintain that the discussion of bandwidth adjustments in *Bruckman* fails to teach or suggest **frames with time slots** and occupying **certain time slots of frames** with data. In fact, there is no mention of **frames with time slots** in the entire disclosure of *Bruckman*.

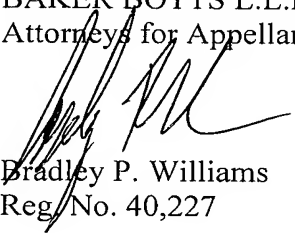
For at least these additional reasons, as well as the reasons provided in the Appeal Brief, Appellants respectfully submit that *Bruckman* does not teach or suggest "upgrading a first node in the optical communications ring by increasing a data transmission rate of the first node to an increased rate, the first node coupled to a second node" and "the second node operable to transmit data at the data transmission rate," as recited in Claim 1. For at least these additional reasons, Appellants respectfully submit that Claim 1 as well as the claims that depend from this independent claim are in condition for allowance. Claims 8, 16, 23, and 31 are allowable for analogous reasons, as are all claims depending therefrom. Therefore, Appellants respectfully request allowance of these claims.

Conclusion

Appellants have demonstrated that the present invention, as claimed, complies with all statutory requirements for a U.S. Patent. Therefore, Appellants respectfully request the Board to reverse the final rejection of the Examiner and instruct the Examiner to issue a Notice of Allowance with respect to all pending claims.

Appellants believe no fees are due. Nonetheless, the Commissioner is hereby authorized to charge any fee and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
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Date: 6/26/09

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